IN THE HIGH COURT OF BOMBAY AT GOA, PANAJI-GOA

COMPANY APPLICATION NO. 51-O OF 2001
IN
COMPANY PETITION NO. 7-B OF 1998

Official Liquidator,
High Court of Bombay at Goa,
Panaji-Goa. .... Applicant

Versus

1. Dadi Kulu Naik,
   H. No. 407, Mausawada,
   Pednem, Goa.

2. Satish V. Kauthankar,
   250/1/3, M.P.T. Colony,
   Head land Sada, Mormugao, Goa.

3. Deepak V. Kauthankar,
   H. No. 777, Mausawado,
   Pednem, Goa. .... Respondents

Ms. Amira Razaq, Advocate for the Applicant.
Shri D. Pangam, Advocate under legal aid scheme for Respondents.

CORAM: **N. A. BRITTO, J.**

DATE: **28th July, 2006**

ORAL ORDER

Heard Ms. Amira Razaq, the learned Counsel on behalf of the applicant/official liquidator and Shri Pangam, the learned Counsel on behalf of respondent no.1/principal borrower.

2. This is a claim application made on behalf of the applicant/official liquidator to recover from the respondents a sum of Rs. 1,51,381.30 with interest at the rate of 20% from 1/01/1999 on account of the loan taken by respondent no.1, with respondents no. 2 & 3 standing as sureties, from the company in liquidation.

3. Respondent no.1 only contested the claim. Respondents no. 2 & 3 though duly served chose not to contest to the proceedings.

4. The official liquidator filed his affidavit in evidence through their junior technical officer and produced the documents relating to the loan/s availed by respondent no.1 from the said company. Respondent no.1 chose not to lead any evidence. Amongst the documents produced is the loan application duly signed by all the respondents dated 23/01/1996 which is at Exhibit AW 1/16. The said application shows that respondent no.1 had applied for a loan of Rs. 1,15,000/- and the said application shows that the said loan was disbursed to respondent no.1 on different dates in the sums of Rs. 50,000/-, Rs. 25,000/-, Rs. 15,000/-, Rs. 15,000/- and Rs. 10,000/-. However, the applicant/official liquidator has been able to produce agreements for loans only in respect of Rs. 15,000/- which

disbursed on 11/06/1996 and 28/06/1996 each and which also show that the interest payable on the said two sums was at the rate of 20%. The applicant/official liquidator has not been able to produce loan agreement in respect of Rs. 50,000/- and Rs. 25,000/- disbursed on 4/03/1996 and 6/03/1996 respectively but on behalf of the applicant the ledger has been produced. In fact there is no serious dispute that the respondent no.1 availed of the said instalments of Rs. 50,000/- and Rs. 25,000/- but what is disputed, in the absence of the loan agreement, is the interest which is payable. On behalf of the applicant/official liquidator two letters have been produced. The first is dated 4/03/1996 which is signed by respondent no.2 as well as by respondent no.1 in which the liability of Rs. 1,15,000/- has been admitted and not only that the amount due towards it in the sum of Rs. 1,56,829/- has also been admitted. Another letter produced is letter dated 8/06/1998 at Exhibit AW 1/13 by which respondent no.1 promised to pay the loan by monthly instalments of Rs. 5,000/- It is submitted on behalf of the applicant/official liquidator that interest on Rs. 75,000/- was calculated at the rate of 20% on the ledger and so also while arriving at the figure of Rs. 1,56,829/- signed by respondents no. 1 & 2 on 4/03/1996 at Exhibit AW 1/15. It is contended on behalf of the respondent no.1, that no interest could be charged at 20% in absence of loan agreement as regards

the sum of Rs. 75,000/-. It is not the case of respondent no.1 that the said sum of Rs. 75,000/- was advanced to respondent no.1 without any interest or with an interest at the rate lower than 20%. Since the instalment of Rs. 15,000/- each paid to respondent no.1 on 11/06/1996 and 28/06/1996 carried an interest of 20% it is safe to presume also with the aid of letter dated 4/03/1996 at Exhibit AW 1/15 that the interest payable on the sum of Rs. 75,000/- was also 20%. The same rate of interest would apply to the instalment of Rs. 10,000/- paid on 23/10/1996. In other words the applicant/official liquidator could not be faulted in claiming interest from the respondents, for the loan taken by respondent no.1 at the rate of 20%.

5. On behalf of respondent no.1 it is pointed out that the applicant/official liquidator had not adjusted a sum of Rs. 5,000/-, Rs. 1,400/- and Rs. 1,500/- paid by respondent no.1 to the company in liquidation on 4/03/1996, 7/06/1996 and 28/06/1996. However, it is pointed out on behalf of the applicant/official liquidator that the sums of Rs. 1,400/- and Rs. 1,500/- were accepted not towards the loan but towards purchase of shares by respondent no.1. This submission appears to be reasonable, in the light of what is stated on the receipts produced on behalf of respondent no.1. The respondents would be entitled to adjust a sum of

Rs. 5,000/- only paid on 4/03/1996. The applicant/official liquidator would be required to deduct the said sum paid by respondent no.1 on 4/03/1996, from the sum claimed by the applicant from the respondents.

6. The applicant/official liquidator therefore would be entitled to recover from the respondents jointly and severally a sum of Rs. 1,46,381.30 with interest at the rate of 20% from 1/01/1999 till date. Considering the facts no future interest is ordered to be paid. The respondents are hereby directed to pay the aforesaid amount jointly and severally by instalments at the rate of Rs. 500/- per month. In fact respondent no.1 is present in person and undertakes to clear the said amount in instalments of Rs. 500/- per month since he is working as a security guard and circumstances do not permit him to pay any amount higher than that. The applicants claim, is hereby decreed in the aforesaid terms.

N. A. BRITTO, J.

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